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RECEIVED

January 13, 1994

JAN 13 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 246
Washington, DC 20554

90-314

Dear Mr. Caton:

Attached is an original and four copies of the Reply to
Oppositions to Petitions for Reconsideration of Sprint
Corporation.

Sincerely,

A handwritten signature in cursive script that reads "Jay C. Keithley".

Jay C. Keithley
Vice President
Law and External Affairs

Attachments

JCK/mlm

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JAN 13 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)	
)	GEN Docket No. 90-314
Amendment of the Commission's)	RM-7140, RM-7175
Rules to Establish New Per-)	RM-7618
sonal Communications Services)	

**REPLY TO OPPOSITIONS TO PETITIONS
 FOR RECONSIDERATION**

Sprint Corporation ("Sprint"), on behalf of Sprint Cellular Company, Sprint Communications Company, L.P., and the United and Central Telephone companies, respectfully files its Reply to Oppositions to petitions for reconsideration. Sprint addresses the oppositions of MCI Telecommunications Corporation ("MCI"), Cablevision Systems Corporation ("Cablevision") and General Communications, Inc. ("GCI").

**I. CELLULAR ELIGIBILITY TO OBTAIN PCS SPECTRUM MUST BE
 MODIFIED TO REMOVE THE UNDUE, NEEDLESS AND
 DISPARATE NEGATIVE IMPACT ON GEOGRAPHICALLY
 DISPERSED CELLULAR CARRIERS**

MCI and Cablevision oppose the modification of cellular eligibility standards.¹ Sprint, in its Petition for Reconsideration and Clarification, proposed a change in the cellular eligibility standards from a 10 percent overlap to a 20 percent overlap. MCI and Cablevision oppose this modification.

1. MCI at 9-12 and Cablevision at 2-4.

Cablevision, citing the Commission, notes that the basis for the Commission's cellular exclusion policy is to ensure "that cellular operators do not exert undue market power."² MCI notes that the eligibility standards were created with the goal of "ensuring that those entities do not abuse their market power to undermine the development of competition in the PCS field."³

Sprint asserts that a change in the cellular eligibility rules that allows a cellular overlap of 20 percent rather than 10 percent will not create a scenario where any existing cellular carrier may exert undue market power. Further, this proposed change will correct, to a large extent, what Sprint believes to be the inadvertent disparate impact of the 10 percent overlap exclusion on geographically dispersed cellular carriers.

In its petition, Sprint shows the egregious negative impact of the 10 percent overlap exclusion on geographically dispersed carriers.⁴ The impact of the 10 percent exclusion on these cellular carriers is totally inappropriate because they lack market power in areas where they have a 10 percent cellular overlap. Indeed, even with a 20 percent cellular overlap, as Sprint has proposed, cellular carriers lack market power. Because cellular

2. In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, FCC 93-451, released October 22, 1993 ("PCS Allocation Order") at 17 and Cablevision Opposition at 4.

3. MCI at 8.

4. Sprint Petition at 2-7 and Attachment.

carriers lack market power when a 20 percent overlap occurs, it is wrong to exclude them from full participation in PCS and does nothing positive to further the Commission's goal of curbing "undue market power" extension.

No party, including both MCI and Ceblevision, has presented any argument or evidence that a cellular carrier with 20 percent overlap is capable of exerting undue market power. The facts and common knowledge indicate that a 20 percent overlap of PCS and cellular will not provide enough market overlap for market power to exist yet alone be "unduly" exerted. Given the disparate negative impact on geographically dispersed cellular carriers, the 10 percent cellular exclusion is inappropriate.

To correct the disparate impact of the 10 percent exclusion, as explained in Sprint's petition, the exclusion must be modified to allow at least a 20 percent overlap. This modification brings with it no negative impacts.

**II. MCI'S TRANSPARENT ATTEMPT TO GAIN UNFAIR COMPETITIVE
ADVANTAGE BY AVOIDING COMPETITION WITH CELLULAR
CARRIERS MUST BE REJECTED**

MCI, in its opposition to reconsideration petitions by others, restated its proposal that the nine largest cellular carriers be prohibited from bidding against MCI for PCS licenses.⁵ This outlandish proposal is a restatement of MCI's

5. MCI Opposition at 7-8.

initial Petition for Reconsideration.⁶ Sprint deals with this matter, and its lack of merits, in its previous opposition.⁷

The Commission, as MCI notes, expects PCS to exhibit strong competitive characteristics. Such expectations will not be realized if the Commission excludes major telecommunications companies from a major portion of the PCS spectrum and concurrently cedes the opportunity to create a dominant national PCS service to MCI. If any party is provided the ability to "exert undue market power" under these bidding proposals, it is MCI.

MCI's transparent attempt to gain an unfair bidding advantage must be soundly rejected, not only because the proposal lacks any merit, but also, as MCI so well characterized such proposals, because "it is difficult to conceive of a more self-serving position under the circumstances."⁸

**III. CELLULAR CARRIERS MUST BE ALLOWED TO BID FOR PCS
WITH THE UNDERSTANDING THAT THEY WILL BE
TECHNICALLY ELIGIBLE WITHIN A REASONABLE PERIOD
THROUGH CORPORATE RESTRUCTURING AFFECTING
THE CONFLICTING PROPERTY**

MCI opposes the proposal by ComCast that bidders be required to make only a "firm commitment" that they would "conform busi-

6. MCI Reconsideration at 2-5.

7. Sprint Opposition at 2-4.

8. MCI Opposition at 2-3.

ness relationships to regulatory mandates" after bidding.⁹

Cablevision suggests that such actions take place within six months of license award.¹⁰ GCI opposes any post-bidding period in which cellular carriers may resolve PCS conflicts.¹¹

MCI points out the alleged requirement, in Sections 309(j)(5), 308(b) and 310, that bidders be qualified to hold licenses at the time bids are submitted. MCI opposes any allowance for problems this may cause among cellular carriers that wish to restructure so that they may more fully participate in PCS. PacTel Corporation filed a waiver request with the Commission because of this potential problem.

Sprint asserts that MCI is seeking to limit its bidding competition by disqualifying those cellular carriers that desire to compete in PCS and that agree to come into compliance with eligibility rules before PCS systems are operational. These cellular companies propose to restructure their cellular holdings so that no conflict exists when PCS operation is to begin.

The only logical basis for restrictions on PCS holdings is the creation of undue market power. Because cellular companies that currently have eligibility constraints agree to restructure the ownership of cellular licenses that cause conflicts, before operation of the PCS system, market power will not be a concern.

9. Id. at 16.

10. Cablevision Opposition at 7-8.

11. GCI Opposition at 11-12.

Thus, potential licensees that have cellular conflicts but agree to restructure to remove those conflicts if they are successful in PCS bidding, should be allowed to bid for PCS licenses even if current conflicts exist.

Sprint understands Cablevision's point concerning buildout and license conflict. To solve this problem, Sprint recommends that cellular conflicts be resolved within one year of PCS licensing.¹² In Sprint's opinion, six months is insufficient time for a reasonable restructuring to be planned and consummated. One year provides sufficient time and will also occur before actual operation of PCS systems begins.

Sprint does not agree that a period in which to resolve conflicts would result in any delays in the provision of PCS, as GCI claims.¹³ The equipment and network necessary to provide PCS is not deployed and not fully developed. As a result, Sprint believes that design and deployment of a pure PCS system, that does not rely on an existing cellular system, will require the full year during which any cellular conflicts may be resolved without delaying PCS deployment. However, even if deployment could occur earlier, the company harmed by delay is the one with

12. Sprint recommends that if conflicts exist after the one year business restructure period that the affected PCS license should be forfeit and subject to rebidding.

13. GCI Opposition at 12.

the cellular overlap, thus giving competitors a head start in the competitive market. This market pressure will hasten resolution of cellular conflicts.

**IV. CELLULAR BUSINESS REORGANIZATIONS MUST QUALIFY
FOR AND RECEIVE TAX CERTIFICATES
FROM THE COMMISSION**

Cablevision and GCI oppose the use of tax certificates,¹⁴ as proposed by GTE,¹⁵ to assist in cellular business restructure to resolve cellular conflicts with PCS. Sprint supports GTE in its request that the Commission grant tax certificates to assist cellular companies and other spectrum holders such as NEXTEL in restructuring to allow spectrum accumulation and to resolve service overlap problems.

Cablevision asserts that because PCS conflicts with cellular will only arise if cellular companies voluntarily bid on PCS spectrum, there is no reason to assist in cellular restructure through the use of tax certificates.¹⁶ Sprint does not support withholding tax certificates from cellular carriers simply because the conflict with PCS occurs only if the cellular company volunteers to provide 30 MHz-based PCS service in areas where it currently has cellular exclusion problems.

Sprint asserts that GTE's justification that the creation of a cellular exclusion provides a "demonstrable causal rela-

14. Cablevision Opposition at 10-13 and GCI at 12-13.

15. GTE Petition at 10 and Comments at 8-9.

16. Cablevision Opposition at 11.

tionship" between 30 MHz-based PCS entry by cellular carriers and the need to restructure current cellular holdings. But for the cellular exclusion, business restructure would not be required for PCS entry. Clearly, ownership of cellular in PCS overlap areas is "an existing interest" in a facility that conflicts with the "new policy" governing acquisition of PCS spectrum. Thus, these transactions are fully consistent with Telelocator Network of America¹⁷ where grant of tax certificates under this standard was approved.

Sprint asserts that the Commission should grant tax certificates as GTE has proposed. Otherwise, cellular carriers will be forced to sell assets they would have continued to hold and suffer negative tax consequences, in order to participate more fully in PCS. In contrast, other businesses are not forced into business restructure in order to participate in PCS. This clear financial disadvantage can be ameliorated by the Commission's issue of tax certificates. If this occurs, all parties enter the bidding on an equal basis and the disparate tax disadvantage of cellular carriers is neutralized.

V. CONCLUSION.


Sprint asserts that the PCS cellular overlap exclusion must be modified to allow at least a 20 percent overlap. This modification will ameliorate the undue, needless and disparate negative impact of the current 10 percent overlap exclusion on geo-

17. Telelocator Network of America 58 FR 2d 1446.

graphically dispersed cellular carriers that lack market power in those markets. The Commission must also soundly reject as anti-competitive, MCI's attempt to handicap its PCS license bidding competitors by excluding the nine largest cellular carriers from bidding on one MTA spectrum band. Further, cellular companies with PCS overlap conflicts must be allowed to bid on PCS licenses with the understanding that such conflicts will be resolved within one year of the grant of such PCS licenses. In regard to resolution of cellular conflicts, tax certificates must be issued to facilitate cellular company restructure.

Respectfully submitted,

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January 13, 1994

CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 13th day of January, 1994, sent via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Reply to Oppositions to Petitions for Reconsideration" of Sprint Corporation in the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No, 90-314, filed this date with the Acting Secretary, Federal Communications Commission, to the person's listed on the attached service list.



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